

Appl. No. 09/827,192
Response Dated July 29, 2004
Reply to Office Action mailed March 29, 2004

Remarks

Claims 1-6, 8-15, 17 and 18 are pending in the instant application. Based on the remarks made herein, Applicants respectfully request that the rejections be withdrawn and that the application be passed to allowance.

Rejections Under 35 U.S.C. § 103(a)

The combination of Elsberg and Jessup further in view of Van Gompel or Yamamoto Fail to teach or suggest all of the claim limitations.

In the Office Action mailed November 13, 2003, the Examiner rejects claims 1, 3, 8-10, 12, and 14, 15, 17 and 18 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,022,432 issued February 8, 2000 to Elsberg et al. (hereinafter "Elsberg") in view of U.S. Patent No. 5,669,996 issued September 23, 1997 to Jessup (hereinafter "Jessup") and further in view of U.S. Patent No. 6,240,569 issued June 5, 2001 to Van Gompel et al. (hereinafter "Van Gompel") or U.S. Patent No. 5,607,416 issued March 4, 1997 to Yamamoto et al. (hereinafter "Yamamoto"). This rejection is respectfully **traversed**.

Elsberg is directed to methods of making prefastened disposable absorbent articles which have side bonds and adjustable fastening systems. Jessup is directed to methods of joining an elastic material to a continuously moving, partially elastic substrate. Van Gompel is directed to a three dimensional disposable panty for holding a sanitary pad. The panty may have elasticized leg and waist openings and be stretchable about the hip and stomach regions of a user. Yamamoto is directed to a disposable absorbent pad adapted to present a boat-shape under the contractile force of elastic members contained in the side flaps, and an elastic support member.

The criteria for establishing a *prima facie* case of obviousness are set forth in the Office Action filed February 9, 2004. Independent claims 1 and 10 of the present invention are directed to a process for making a prefastened and refastenable pant that includes, *inter alia*, the step of activating at least a portion of retractive material causing retraction of the retractive material, where "activating the retractive material provides a waistband-to-hip circumference

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ratio of about 95 percent or less at a 70 gram loading and a waistband-to-hip circumference ratio of about 100 percent at a 2000 gram loading (emphasis added)."

The Examiner appears to renew his assertions as presented in the Office Action mailed June 4, 2003, and further acknowledges on page 3 of the Office Action mailed March 29, 2004 that the combination of Elsberg and Jessup "failed to teach the specific waist to hip circumference ratios as defined in the claim." The Examiner, however, further asserts on page 4 that:

"[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the tension in the elastics in the waistband and/or the type and amount of elastic provided in the waist region of the finished assembly such that the disposable absorbent undergarment was capable of being used properly (i.e. retained on the used under load and easily placed on and off) when making the same according to the processing of Elsberg as modified by Jessup."

Further, in an attempt to support the assertion that one of ordinary skill in the art would desired the waist to hip circumference ratios set forth in the claims, the Examiner relies on Van Gompel or Yamamoto. Applicants disagree with the Examiner's assertions.

Applicants respectfully renew their position with regard to Elsberg and Jessup as set forth in the Amendment filed February 9, 2004. In summary, these positions include:

- Elsberg and Jessup fail to teach or suggest the element of providing a "waistband-to-hip circumference ratio of about 95 percent or less at a 70 gram loading and a waistband-to-hip circumference ratio of about 100 percent at a 2000 gram loading";
- The Examiner is improperly relying on hindsight to arrive at the claimed invention; and
- The Examiner is incorrectly applying the standard of routine experimentation as set forth in MPEP § 2144.05(II)(B).

In addition, Applicants submit that Van Gompel and Yamamoto, alone or in combination fail to correct for these aforementioned deficiencies. That is, neither Van Gompel and Yamamoto teach or suggest the step of activating at least a portion of the retractive material

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to provide "a waistband-to-hip circumference ratio of about 95 percent or less at a 70 gram loading and a waistband-to-hip circumference ratio of about 100 percent at a 2000 gram loading."

For Example, the Examiner, on page 5 of the Office Action mailed March 29, 2004, references Col. 10, lines 1-14 and lines 23-36. A review of this portion of the reference, however, indicate that Van Gompel is utilizing a waist elastic (22) to provide a certain level of tension and the body elastics (44) in another portion of the article to provide an alternative level of tension. Clearly, this does not teach or suggest the step of activating at least a portion of retractive material to provide a waistband-to-hip circumference ratio of about 95 percent or less at a 70 gram loading and a waistband-to-hip circumference ratio of about 100 percent at a 2000 gram loading. Moreover, Applicants are at a loss for why one of ordinary skill in the art would be motivated to combine aspects of the waist elastic and body elastic construction of Van Gompel with the articles of Jessup and Elsberg. In particular, modifying Jessup with the waist elastic (22) and body elastic (44) construction of Van Gompel would render the prior art (i.e. the invention of Jessup) unsatisfactory for its intended purpose. MPEP 2143.01.

As to Yamamoto, the Examiner points to Col. 4, lines 34 – 40 for support of his position. Applicants respectfully assert, however, that this portion of Yamamoto merely states that the waist band 2 presents "a stretching stress sufficient to prevent the pad member 1 from slipping down due to the load of the pad member 1." This portion of Yamamoto does not teach or suggest the step of activating at least a portion of the retractive material to provide "a waistband-to-hip circumference ratio of about 95 percent or less at a 70 gram loading and a waistband-to-hip circumference ratio of about 100 percent at a 2000 gram loading" as set forth in claims 1 and 10 of the present invention.

In sum, Applicants submit that the Examiner is improperly relying on hindsight based on the teachings of the present invention in order to arrive at these positions. That is, it appears that the Examiner is improperly utilizing Applicant's disclosure as a road map for picking and choosing amongst a universe of potential configurations to arrive at the distinctive changes and modifications needed to further derive Applicants' claimed invention.

Accordingly, for at least the reasons set forth above, Applicants respectfully assert that the Examiner has not set forth a *prima facie* case of obviousness and therefore claims 1 and

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10, as amended, are patentable over Elsberg in view of Jessup, further in view of Van Gompel or Yamamoto. Moreover, claims 3, 8, 9, 12, 14, 15, 17 and 18 all eventually depend from claims 1 or 10; therefore, these claims are also accordingly patentable over Elsberg in view of Jessup, further in view of Van Gompel or Yamamoto.

The combination of Elsberg and Jessup, further in view of Van Gompel or Yamamoto and further in view of Roland or Thorson, fail to teach or suggest all of the claim limitations.

In the Office Action mailed November 13, 2003, the Examiner rejects claims 2, 4 - 5, and 11 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Elsberg in view of Jessup, further in view of Van Gompel or Yamamoto and further in view of U.S. Patent No. 4,665,306 issued May 12, 1987 to Roland et al. (hereinafter "Roland") or U.S. Patent No. 4,680,450 issued July 14, 1987 to Thorson et al. (hereinafter "Thorson"). This rejection is respectfully **traversed**.

Claims 2 and 11 depend from independent claims 1 and 10 and are further recite that the step of activating the retractive material includes applying electromagnetic radiation. Claim 4 eventually depends from independent claim 1 and further recites that a greater volume of heated air is applied to a waistband as compared to a hip section. Claim 5 eventually depends from independent claim 1 and further recites that a higher temperature air flow is applied to a waistband as compared to a hip section. As discussed above with respect to claims 1 and 10, the combination of Elsberg and Jessup and Van Gompel or Yamamoto do not teach or suggest each and every element of the claimed invention. Moreover, applicants respectfully submit that neither Roland nor Thorson, alone or in combination, correct for the deficiencies of Elsberg and Jessup and Van Gompel or Yamamoto. That is, Roland and Thorson in combination with Elsberg and Jessup and Van Gompel or Yamamoto fail to teach or suggest providing a "waistband-to-hip circumference ratio of about 95 percent or less at a 70 gram loading and a waistband-to-hip circumference ratio of about 100 percent at a 2000 gram loading." Accordingly, Applicants respectfully submit that claims 2, 4-5, and 11 are patentable over Elsberg in view of Jessup, further in view of Van Gompel or Yamamoto and further in view of Roland or Thorson.

Further, and with respect to claims 4 and 5, applicants reiterate once again that the Examiner has failed to point out how either Roland or Thorson teach or suggest providing a

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comparatively differentiated heat application to a waistband and a hip section of an article. That is, the Examiner has failed to indicate with particularity a passage or figure of Roland or Thorson indicating how these references disclose the step of applying a greater volume of heated air to a waistband as compared to a hip section, or the step of applying a higher temperature air flow to a waistband as compared to a hip section. Nonetheless, Applicants again submit that Figs. 7A – 7C of Roland and Figs. 5 – 7 of Thorson appear to indicate that heat or radiation would be applied to the portion of the garment that would be placed about the hips of the wearer as well as the portion of the waist area of the garment. Therefore, for at least these additional reasons, claims 4 and 5 are patentable over Elsberg in view of Jessup, further in view of Van Gompel or Yamamoto and further in view of Roland or Thorson.

The combination of Elsberg and Jessup further in view of Van Gompel or Yamamoto, further in view of Baird or Muckenfuhs, fail to teach or suggest all of the claim limitations.

In the Office Action mailed November 13, 2003, the Examiner rejects claims 6 and 13 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Elsberg in view of Jessup, further in view of Van Gompel or Yamamoto and further in view of U.S. Patent No. 4,908,247 issued March 13, 1990 to Baird et al. (hereinafter "Baird") or U.S. Patent No. 5,092,862 issued March 3, 1992 to Muckenfuhs et al. (hereinafter "Muckenfuhs"). This rejection is respectfully **traversed**.

Claims 6 and 13 eventually depend from independent claims 1 and 10, respectively. As discussed above with respect to claims 1 and 10, Elsberg and Jessup and Van Gompel or Yamamoto do not teach or suggest each and every element of the claimed invention. Moreover, applicants respectfully submit that neither Baird nor Muckenfuhs, alone or in combination, correct for the deficiencies of Elsberg and Jessup and Van Gompel or Yamamoto. That is, Baird and Muckenfuhs, in combination with Elsberg and Jessup and Van Gompel or Yamamoto, fail to teach or suggest providing a "waistband-to-hip circumference ratio of about 95 percent or less at a 70 gram loading and a waistband-to-hip circumference ratio of about 100 percent at a 2000 gram loading." Accordingly, Applicants respectfully submit that claims 6 and 13 are patentable over Elsberg in view of Jessup further in view of Van Gompel or Yamamoto and further in view of Baird or Muckenfuhs.

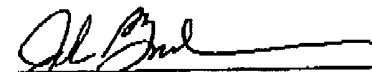
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In conclusion, and in view of the above amendments and remarks, reexamination, reconsideration and withdrawal of the rejections of claims 1 - 6, 8 - 15, and 17 and 18 under 35 U.S.C. § 103 are respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-3862.

The Commissioner is hereby authorized to charge any fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.


Respectfully submitted,

ROBERT L. POPP et al.

By: 
John L. Brodersen
Registration No.: 51,236
Attorney for Applicant

CERTIFICATE OF FACSIMILE TRANSMISSION

I, Barbara D. Miller, hereby certify that on July 29, 2004, this document is being sent by facsimile transmission addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA to facsimile number (703) 872-9306.

By: 
Barbara D. Miller